

## **Remarks**

### **Claims in the Application.**

Claims 1-18 are active in this application. Claims 1-18 have been rejected. Based on the amendments to the claims and the following remarks, reconsideration is respectfully requested.

### **Rejection of Claims 1-18 under 35 U.S.C. § 101.**

Claims 1-18 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The claims have been amended and the amendments are supported by the Specification as filed. Reconsideration is respectfully requested.

### **Rejection of Claims 1-18 under 35 U.S.C. § 102.**

Claims 1-3, 5-6, 8, 10, and 18 have been rejected under 35 U.S.C. § 102 by U.S. Patent No. 6,199,113 ("*Alegre*"). To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention either explicitly or inherently. *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). For the reasons previously presented and for the following reasons, reconsideration is respectfully requested.

*Alegre* discloses that the "*Web host 210 stores the session key at client browser 110 using a cookie.*" See Col. 4, ll. 41-42. Moreover, the *Alegre* does not disclose an authentication software product embodied in a computer readable medium. This novel distinction is found throughout the claims of the present application. Moreover, *Alegre* makes no mention of an authentication device. Reconsideration is respectfully requested.

### **Rejection under 35 U.S.C. § 103(a).**

#### **Rejection of Claims 4, 9, and 11-17.**

Claims 4, 9, and 11-17 were rejected under 35 U.S.C. § 103(a) in light of *Alegre* in view of U.S. Patent No. 6,243,468 ("*Pearce*"). When considering an obviousness rejection, the Examiner cannot "pick and choose among the individual elements of assorted prior art references to recreate the claimed invention," but rather, the Examiner must look for "some teaching or suggestion in the references to support their use in the particular claimed combination." See *SmithKline Diagnostics, Inc. v. Helena Lab. Corp.*, 859 F.2d 878, 887 (Fed. Cir. 1988). Moreover, a prior art reference may be considered to teach away when "a person of ordinary

skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

For the reasons discussed above, *Alegre* teaches away from the present invention as claimed. The teaching of *Pearce* does not cure this deficiency. *Pearce* also fails to teach software product distribution by using authentication software product that is capable of servicing at least one external source wherein the authentication software product is embodied in a computer readable medium.

*Pearce* instead focuses on hashing routines and similar techniques of thwarting piracy. Assuming *arguendo* that *Pearce* teaches elements of the dependent claims, *Pearce* still fails to cure the deficiencies of *Alegre* in teaching the inventive broad claims and therefore all the claims dependent thereto.

#### **Rejection of Claim 7.**

Claim 7 was rejected in light of *Alegre* in view of U.S. Patent No. 6,212,635 (“*Reardon*”). Given that the authentication device of Claim 7 has been incorporated into the claims, it is important to note that the teaching of *Reardon* also fails to cure this deficiency of *Alegre*. The Examiner has noted that *Alegre* includes an authentication server. This element cannot be attributed to both the element of an authentication software product and the element of an authentication device. Therefore, *Alegre* does disclose or teach an authentication device.

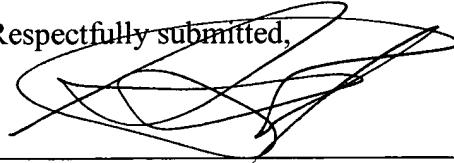
*Reardon* fails to teach software product distribution by using authentication software product that is capable of servicing at least one external source and focuses on token management. *Reardon* does not cure the failure of *Alegre* to provide for two elements: an authentication software product and the element of an authentication device. *Reardon* teaches away from this inventive distinction. Reconsideration is respectfully requested.

#### **CONCLUSION**

For the stated reasons, reconsideration is respectfully requested. Though Applicant does not believe that any fee is necessary, the Commissioner is hereby authorized to charge or credit the Deposit Account No. 12-1322 of Locke Liddell & Sapp LLP under Order No. 64423-00040. In light of the foregoing remarks, the claims of the application have been distinguished over the

cited references. The Examiner is requested to contact the undersigned at (713) 226-1218 should he deem it necessary to advance the prosecution of this application.

Respectfully submitted,



Steven S. Boyd  
Registration No. 42,353

DATED: November 19, 2004

LOCKE LIDDELL & SAPP LLP  
600 Travis, Suite 3400  
Houston, Texas 77002-3095  
Telephone No.: (713) 226-1142  
Facsimile No.: (713) 223-3717

CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 1.8(a)

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Date: November 19, 2004

  
Beth A. Sanders